IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

ABIGAIL FLANDERS 425 Waupelani Drive Apartment 202 State College, PA 16801	:	CIVIL ACTION
Plaintiff,	:	No. _______________
v.	:	
	:	JURY TRIAL DEMANDED
ACCUWEATHER, INC. 385 Science Park Road State College, PA 16803	:	
Defendant.	:	

CIVIL ACTION COMPLAINT

The Plaintiff, Abigail Flanders, by and through her undersigned counsel, files this Civil Action Complaint, and hereby avers as follows:

I. Introduction

1. The Plaintiff initiates this action to seek redress against the Defendant, her former employer, for unlawful age discrimination, in violation of the Age Discrimination in Employment Act of 1967 ("ADEA"), for unlawful race and gender discrimination, in violation of Title VII of the Civil Rights Act of 1964, as amended ("Title VII"), 42 U.S.C. § 1981, the Pennsylvania Human Relations Act, 43 P.S. § 951, *et seq.*, ("PHRA") and other applicable law.

II. The Parties

2. The Plaintiff, Abigail Flanders, is an adult individual currently residing at the above address.

3. The Defendant, AccuWeather, Inc., is a corporation created and existing pursuant to the laws of the Commonwealth of Pennsylvania, with a principal place of business at the above address.

4. At all times relevant, the Defendant acted by and through its agents, servants, and employees, each of whom, at all times relevant, acted within the scope of his or her job duties.

5. The Defendant is an "employer" within the meaning of the ADEA because it is engaged in an industry affecting interstate commerce and because it maintained or maintains twenty (20) or more employees for each working day in each of twenty (20) or more weeks in the current or preceding calendar year.

6. The Defendant is an "employer" within the meaning of Title VII because it is engaged in an industry affecting interstate commerce and because it maintains or maintained fifteen (15) or more employees for each working day in each of twenty (20) or more weeks in the current or preceding calendar year.

7. The Defendant also maintains a sufficient number of employees to satisfy the jurisdictional prerequisites of the PHRA (requiring four or more employees).

III. Jurisdiction and Venue

8. All of the allegations contained in the foregoing paragraphs of this Complaint are incorporated by reference herein as if the same were set forth at length.

9. The Court may properly maintain personal jurisdiction over the Defendant because the Defendant's contacts with this state and this judicial district are sufficient for the exercise of jurisdiction over the Defendant to comply with traditional notions of fair play and substantial justice, satisfying the standard set forth by the United States Supreme Court in *International Shoe Co. v. Washington*, 326 U.S. 310 (1945) and its progeny.

10. The United States District Court for the Middle District of Pennsylvania may exercise original subject-matter jurisdiction over the instant action pursuant to 28 U.S.C. §§ 1331 and 1343(a)(4) because it arises under the laws of the United States and seeks redress for violations of civil rights.

11. The Court may also maintain supplemental jurisdiction over state law claims set forth herein pursuant to 28 U.S.C. § 1367(a) and Rule 18(a) of the Federal Rules of Civil Procedure because they are sufficiently related to one or more claims within the Court's original jurisdiction in that they form part of the same case or controversy.

12. Venue is properly laid in the Middle District of Pennsylvania pursuant to 28 U.S.C. §§ 1391(b)(1) and 1391(b)(2) because the Defendant is located in and conducts business in this judicial district and because a substantial part of the acts and/or omissions giving rise to the claims set forth herein occurred in this judicial district (the Plaintiff was employed in the Middle District of Pennsylvania at the time of the unlawful actions set forth herein).

IV. Procedural and Administrative Remedies

13. All of the allegations contained in the foregoing paragraphs of this Complaint are incorporated by reference herein as if the same were set forth at length.

14. The Plaintiff has satisfied the procedural and administrative requirements for proceeding under the ADEA, Title VII and the PHRA as follows:

a. On or about December 3, 2009, the Plaintiff filed a timely written charge of discrimination (No. 2009-03662) against the Defendant with the Pennsylvania Human Relations Commission alleging age, race and gender discrimination;

b. The Plaintiff also cross-filed the aforementioned charge of discrimination with the Equal Employment Opportunity Commission (No. 17F-2010-60658);

c. The EEOC issued a Notice of Right to Sue on the foregoing charge on or about November 15, 2010;

d. The instant action is timely because it is initiated within ninety (90) days of the receipt of the aforementioned Notice.

15. The Plaintiff has exhausted her administrative remedies as to the allegations of this Complaint.

V. Factual Background

16. All of the allegations contained in the foregoing paragraphs of this Complaint are incorporated by reference herein as if the same were set forth at length.

17. The Plaintiff's date of birth is March 24, 1951.

18. The Plaintiff is an African-American female.

19. The Plaintiff worked for the Defendant for over two years as its Director of Affiliate Relations.

20. At the time of her termination, the Plaintiff was the only African-American female employed by the Defendant.

21. On or about August 13, 2009, the Plaintiff was placed on a sixty-day review by her direct supervisor, Thomas Loebig (Caucasian).

22. The Plaintiff was placed on this review, despite the fact that there were no problems with any of her work.

23. Mr. Loebig falsely alleged that the Plaintiff was responsible for "poor surveys," despite the fact that 90% of the surveys in regards to the Plaintiff work were positive.

24. Younger employees who are not African-American and female were treated more favorably, in that they were not placed on sixty-day reviews, nor were they discharged for similar reasons.

25. Prior to the Plaintiff's termination, Mr. Loebig began to take assignments and duties away from her, which were in turn given to Laura Milton, a younger female Caucasian. These assignments included columns, newsletters and presentations, all of which were taken away from the Plaintiff without cause.

26. Mr. Loebig constantly talked down to the Plaintiff, interrupted her, took control of her presentations and criticized her to a much greater extent than younger male Caucasian employees.

27. Additionally, Mr. Loebig allowed Ms. Milton to present information to a client with misspelled words, under the Plaintiff's name, as if the Plaintiff was the person responsible for the careless work product.

28. On or about October 13, 2009, the Plaintiff was terminated, yet she was not given any reason for the termination.

29. Following the Plaintiff's termination, all of her duties were taken over by Ms. Milton, a female Caucasian, aged 39.

30. Additionally, the Defendant had given Caucasian employees severance packages after separation of their employment, however, the Defendant failed to offer the Plaintiff any such severance package.

31. The Plaintiff was subjected to discrimination in that following her termination, she was replaced with a younger, less qualified non-African-American employee.

32. The Plaintiff was terminated pretextually when in reality, her termination was a consequence of her age, race and gender.

Count I
ADEA – Discrimination

33. All of the allegations contained in the foregoing paragraphs of this Complaint are incorporated by reference herein as if the same were set forth at length.

34. By virtue of her age (58 on the date of her termination), the Plaintiff is in the class of persons protected by the ADEA.

35. The foregoing conduct, in terminating the Plaintiff because of her age and replacing her with a younger worker, constitutes unlawful discrimination against the Plaintiff.

36. As a result of the Defendant's unlawful discrimination, the Plaintiff has suffered damages as set forth herein.

WHEREFORE, the Plaintiff seeks the damages set forth in the *Ad Damnum* clause of this Complaint, *infra*.

Count II
Title VII – Race and Gender Discrimination

37. The allegations contained in the foregoing paragraphs of this Complaint are incorporated by reference herein as if the same were set forth at length.

38. The foregoing actions by the Defendant constitute unlawful discrimination against the Plaintiff on the basis of her race (African-American) and gender (female).

39. In acting as aforesaid, the Defendant subjected the Plaintiff to disparate treatment on the basis of her race (African-American) and gender (female).

40. In acting as aforesaid, the Defendant subjected the Plaintiff to negative treatment to which similarly-situated non-African-American male employees were not subjected, and/or treated similarly-situated non-African-American male employees in a more favorable manner.

41. The Defendant, by and through its agents, subjected the Plaintiff to adverse employment actions (including termination of employment for pretextual reasons and denial of severance) as a direct result of her race (African-American) and gender (female).

42. The Defendant terminated the Plaintiff's employment because of her race (African-American) and her gender (female) and did not terminate the employment of similarly-situated non-African-American male employees.

43. As a result of the Defendant's unlawful discrimination as aforesaid, the Plaintiff has suffered damages as set forth herein.

WHEREFORE, the Plaintiff seeks the damages set forth in the *Ad Damnum* clause of the instant Complaint, *infra.*

Count III
Violations of 42 U.S.C. § 1981

44. The allegations contained in the foregoing paragraphs of this Complaint are incorporated by reference herein as if set forth at length.

45. At all times relevant herein, the Plaintiff maintained or sought to maintain a contractual relationship with the Defendant (*i.e.,* an employment relationship).

46. At all times relevant herein, the Defendant acted by and through its agents, servants, and employees, to intentionally discriminate against the Plaintiff as a result of her race (African-American) and thereby deny her the benefits of the contractual relationship she had entered with the Defendant by terminating her employment for pretextual reasons.

47. The Plaintiff has suffered damages as a direct result of the Defendant's unlawful actions as aforesaid.

WHEREFORE, the Plaintiff seeks the damages set forth in the *Ad Damnum* clause of the instant Complaint, *infra.*

Count IV
PHRA

48. All of the allegations contained in the foregoing paragraphs of this Complaint are incorporated by reference herein as if the same were set forth at length.

49. The foregoing conduct by Defendant also violates the PHRA.

50. As a result of Defendant's violations of the PHRA, the Plaintiff has suffered damages, as set forth herein.

WHEREFORE, the Plaintiff seeks the damages set forth in the *Ad Damnum* clause of this Complaint, *infra*.

AD DAMNUM **CLAUSE/PRAYER FOR RELIEF**

WHEREFORE, the Plaintiff prays that the Court enter judgment in her favor and against the Defendant and that it enter an Order as follows:

a. The Defendant is to be permanently enjoined from discriminating or retaliating against the Plaintiff on the basis of her age, race, gender and/or any basis prohibited under applicable federal and state law;

b. The Defendant is to be prohibited from continuing to maintain its illegal policy, practice, or custom of discriminating or retaliating against employees based on their age, race, gender are to be ordered to promulgate an effective policy against such discrimination and retaliation and to adhere thereto;

c. The Defendant is to compensate the Plaintiff, reimburse the Plaintiff, and to make the Plaintiff whole for any and all pay and benefits the Plaintiff would have received had it not been for the Defendant's illegal actions, including but not limited to back pay, front pay, salary, pay increases, bonuses, medical and other benefits, training, promotions, pension, and seniority. The Plaintiff should be accorded those benefits illegally withheld from the date she first suffered discrimination and/or retaliation at the hands of the Defendant until the date of verdict;

d. The Plaintiff is to be awarded actual damages, as well as damages for the pain, suffering, and humiliation caused to her by the Defendant's actions;

e. The Plaintiff is to be awarded double damages pursuant to 29 U.S.C. 626(b) for a willful violation of the ADEA;

f. The Plaintiff is to be accorded any and all other equitable and legal relief as the Court deems just, proper, and appropriate;

g. The Plaintiff is to be awarded the costs and expenses of this action and reasonable legal fees as provided by applicable federal and state law;

h. Any verdict in favor of the Plaintiff is to be molded by the Court to maximize the financial recovery available to the Plaintiff in light of the caps on certain damages set forth in applicable federal law;

i. The Plaintiff is to be granted such additional injunctive or other relief as she may request during the pendency of this action in an effort to ensure the Defendant does not engage – or ceases engaging – in illegal retaliation against the Plaintiff or other witnesses to this action;

j. The Court is to maintain jurisdiction of this action after verdict to ensure compliance with its Orders therein;

k. The Plaintiff's claims against the Defendant are to receive a trial by jury to the extent allowed by applicable law. The Plaintiff has also endorsed this demand on the caption of this Complaint in accordance with Federal Rule of Civil Procedure 38(b).

Respectfully submitted,

KOLMAN ELY, P.C.

By: /s/ Wayne A. Ely, Esquire

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